



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 4, 2020

Ms. P. Armstrong
Assistant City Attorney
City of Dallas
1400 South Lamar Street, 6th Floor, 6W
Dallas, Texas 75215

OR2020-06845

Dear Ms. Armstrong:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 814945 (ORR#s D035417-120419/C011242-120419).

The City of Dallas and the Dallas Police Department (collectively the "city") received a request for information pertaining to the requestor and the city's Fusion Center's policies and procedures. You claim the submitted information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.¹ We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we note the city has only submitted standard operating procedures. To the extent any information pertaining to the requestor existed on the date the city received the request, we assume the city has released it. If the city has not released any such information, it must do so at this time. *See id.* §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible).

Initially, you state the submitted information was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2018-30232 (2018). In response to Open Records Letter No. 2018-30232, the city has filed a lawsuit against our office. *See City of Dallas v. Ken Paxton, Attorney Gen. of Tex.*, Cause No. D-1-GN-18-002893 (53rd Dist. Ct., of Travis County, Tex.). Accordingly, to the extent

¹ We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

the submitted information is at issue in this lawsuit, we will allow the trial court to resolve the issue of whether the information must be released to the public.

With regard to any information in the current request that is identical to information previously ruled upon by this office and is not at issue in the aforementioned lawsuit there is no indication the law, facts, and circumstances on which Open Records Letter No. 2018- 30232 was based has changed. Accordingly, with regard to any information in the current request that is identical to information previously ruled upon by this office and is not at issue in the aforementioned lawsuit, we conclude the city may continue to rely on Open Records Letter No. 2018-30232 as a previous determination and withhold or release the identical information in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes information is or is not excepted from disclosure). We will consider the public availability of the submitted information to the extent the submitted information is not subject to litigation and was not previously ruled upon.

Section 552.103 of the Government Code provides, in relevant part:

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

...

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

Gov't Code § 552.103(a), (c). The governmental body claiming section 552.103 has the burden of providing relevant facts and documents sufficient to establish the applicability of section 552.103 to the information it seeks to withhold. To meet this burden, the governmental body must demonstrate: (1) litigation was pending or reasonably anticipated on the date of its receipt of the request for information, and (2) the information at issue is related to that litigation. *See Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479 (Tex. App.—Austin 1997, orig. proceeding); *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.). Both elements of the test must be met in order for information to be excepted from disclosure under section 552.103. *See* Open Records Decision No. 551 at 4 (1990).

You state, and provide documentation showing, prior to its receipt of the instant request, a lawsuit styled *Makala Wright v. City of Dallas*, Cause No. 3-19CV2855-K, was filed and

is currently pending against the city in the United States District Court of the Northern District of Texas, Dallas Division. Therefore, we agree litigation was pending prior to the date the city received the present request for information. You also state the information at issue pertains to the substance of the lawsuit claims. Based on these representations and our review, we find the information at issue is related to the pending litigation. Therefore, we conclude the city may withhold the submitted information under section 552.103 of the Government Code.

Generally, however, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. *See* Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to all parties to the pending litigation is not excepted from disclosure under section 552.103(a) and must be disclosed. Further, the applicability of section 552.103(a) ends once the litigation has been concluded. *See* Attorney General Opinion MW-575 (1982); *see also* Open Records Decision No. 350 (1982).

In summary, to the extent the submitted information is at issue in *City of Dallas v. Paxton*, we will allow the trial court to resolve the issue of whether the information that is the subject of the pending litigation must be released to the public. With regard to any information in the current request that is identical to information previously ruled upon by this office and is not at issue in the aforementioned lawsuit, we conclude the city may continue to rely on Open Records Letter No. 2018-30232 as a previous determination and withhold or release the identical information in accordance with that ruling. The city may withhold the any remaining information at issue under section 552.103 of the Government Code.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,



Kelly McWethy
Assistant Attorney General
Open Records Division

KM/eb

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Enc. Submitted documents

c: Requestor
(w/o enclosures)